

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

THE APPLICATION OF MCI TELECOM- )  
MUNICATIONS CORPORATION TO OFFER )  
INTEREXCHANGE TELECOMMUNICATIONS ) CASE NO. 8946  
SERVICES WITHIN THE COMMONWEALTH )  
OF KENTUCKY )

O R D E R

On December 7, 1984, MCI Telecommunications Corporation ("MCI") filed an application for a certificate of public convenience and necessity to offer interexchange telecommunications services within Kentucky. MCI presently offers these services on an interstate basis. The Attorney General's Division of Consumer Protection and AT&T of the South Central States, Inc., ("ATTCOM") were permitted to intervene.

On October 30, 1984, a hearing was held in this matter. Briefs were filed on November 12, and 16, 1984.

MCI presently serves the cities of Louisville, Lexington, Fort Knox, and Owensboro in Kentucky. MCI terminates calls in all cities within Kentucky. Louisville and Lexington are the cities at this time in which MCI owns telecommunications equipment used to complete calls. The other cities are served by leased lines.

The brief filed by ATTCOM raised an issue regarding whether MCI should be required to pay intrastate access charges prospectively and retroactively to January 1, 1984. It is

implicit in the concept of the Commission granting MCI authority for intrastate interLATA services that MCI will pay all relevant intrastate access charges once certificated. However, ATTCOM has raised a new issue (i.e. payment of access charges retroactive to January 1, 1984, as a condition for granting certification) by its brief to which no party had prior notice. MCI challenged ATTCOM's raising the issue of retroactive payment of access charges.

The Commission is of the opinion and FINDS that ATTCOM has improperly raised the issue of retroactive payment of access charges. ATTCOM chose not to raise the issue at or before the October 30, 1984, hearing. ATTCOM did not offer any testimony at the hearing.<sup>1</sup> Therefore, no party had notice of that issue and to consider it now may result in a denial of due process. However, even if the Commission considered this issue on the merits, there is insufficient evidence to indicate that MCI was willfully providing intrastate communications services within Kentucky without a certificate or that MCI was holding itself out to the public as such a carrier. As recognized in the October 26, 1984, Order in Administrative Case No. 273, An Inquiry into Inter- and IntraLATA Intrastate Competition in Toll and related Services Markets in Kentucky, there is currently no evidence to indicate that MCI has carried significant amounts of intrastate traffic.

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<sup>1</sup> Transcript of Evidence ("T.E.") at page 168.

During rehearing in Administrative Case No. 273, it came to the Commission's attention that Sprint, which had an intrastate certificate request pending, might seek total intrastate authority as a WATS reseller rather than attempt to obtain an intrastate, interLATA only certificate. The Commission's Order on Rehearing advised Sprint that this issue and whether partially facilities-based carriers should be treated as "pure" resellers were proper concerns for Sprint's certificate case.<sup>2</sup>

At the beginning of the October 30, 1984, hearing in this case, all the applicants were asked whether they were seeking certification as a non-dominant facilities-based carrier providing intrastate communication only or as a reseller.<sup>3</sup> Sprint, MCI and Allnet all replied that they sought an intrastate interLATA certificate, not status as a reseller.<sup>4</sup> Thus, even though the Commission had expressly stated that its certificate case was the proper forum to raise the issue of whether facilities-based or reseller treatment should be accorded Sprint, and logically any other applicant seeking the same authorization and treatment, Sprint, as well as MCI and Allnet, chose not to pursue the matter at the hearing in its certificate case.

In its brief ATTCOM requests that the Commission recognize Sprint, MCI and Allnet as facilities-based carriers. Since MCI

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<sup>2</sup> October 26, 1984, Order in Administrative Case No. 273 at pages 19 and 25-26.

<sup>3</sup> T.E. at page 7.

<sup>4</sup> T.E. at page 8.

is not seeking operating authority as a WATS reseller and is seeking only intrastate, interLATA authority, the issue raised by ATTCOM does not require that the Commission take action at this time.

ATTCOM alleges in its post hearing brief that MCI has not met the requirements concerning jurisdictional traffic studies imposed by the October 26, 1984, Order in Administrative Case No. 273.<sup>5</sup> This Order required that,

. . .any OCC seeking intrastate interLATA authority in Kentucky shall provide valid estimates of the volume of Kentucky intraLATA traffic carried over its network within 3 months from the date of any certificate granted or 3 months from the date of this Order, whichever occurs first.<sup>6</sup>

This Order further required that,

. . .OCCs seeking intrastate interLATA certification shall. . .agree to supply the information discussed in the prior ordering paragraph [reproduced above] as a precondition to obtaining a certificate and as a condition to retaining it.<sup>7</sup>

In its reply brief, MCI contends that it is ". . .ready, willing, and able to comply with all applicable Commission requirements."<sup>8</sup> MCI is of the opinion that it has thus far conformed with the Commission's requirements concerning jurisdictional traffic studies.

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<sup>5</sup> Brief of ATTCOM at pages 9-10.

<sup>6</sup> Order on Rehearing, Administrative Case No. 273, at page 25.

<sup>7</sup> Ibid.

<sup>8</sup> Reply brief of MCI at page 6.

The Commission is of the opinion and finds that MCI has, thus far, met the requirements contained in the October 26, 1984, Order concerning jurisdictional traffic studies. MCI has agreed to supply the required information. A conference is being scheduled to determine precisely how MCI will furnish this information. The Commission fully expects that MCI will provide the agreed-upon information within the specified time period. Should MCI fail, at any juncture, to comply with the traffic reporting provisions contained in the October 26, 1984, Order, the Commission will, at that time, take appropriate action.

In Administrative Case No. 273 the Commission required companies filing for a certificate of public convenience and necessity to make a showing of financial viability. This could take the form of pro forma financial statements or, as an alternative subject to waiver by the Commission, sufficient cash reserves to sustain the applicant through its initial operating period. The Commission also required that Kentucky-specific records, including a balance sheet, income statement, a statement of changes in financial position, and other information, be submitted annually. MCI in this proceeding submitted financial information to indicate that it possesses the financial viability to provide service in Kentucky. MCI also indicated at the hearing that it does not maintain Kentucky-specific records, but that it would be willing to work with the Commission's staff to meet the intrastate reporting requirements.<sup>9</sup> The Commission

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<sup>9</sup> T.E. at page 49.

expects MCI to notify the Commission should any problems arise in the fulfillment of the reporting requirements of Administrative Case No. 273.

#### FINDINGS AND ORDER

The Commission, having considered the evidence of record and being advised, is of the opinion and finds that:

- (1) MCI is technically capable of providing the service.
- (2) MCI has shown that it is financially able to provide telecommunications services within Kentucky.
- (3) MCI is ready, willing, and able to provide service and should be granted a certificate of public convenience and necessity to provide intrastate interLATA telecommunications services to the public.
- (4) MCI should not be allowed to provide intrastate intraLATA services to the public.
- (5) MCI should conform its intrastate offering of service to provisions of the May 25, 1984, and October 26, 1984, Orders in Administrative Case No. 273.
- (6) MCI's rates as filed should be approved.
- (7) MCI should file its tariffs containing its rates, rules, and regulations in the manner prescribed by the Commission.

IT IS THEREFORE ORDERED that MCI is granted a certificate of public convenience and necessity to provide intrastate, inter-LATA communications to the residents of Kentucky. This grant is expressly conditioned upon MCI's compliance with the May 25, 1984, and October 26, 1984, Orders in Administrative Case No. 273

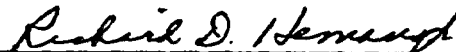
and the November 19, 1984, Order in Case No. 8838, including, but not limited to, the following: provision of jurisdictional reports to local exchange carriers consistent with the Commission-approved methodology; complete, detailed and accurate records, workpapers and supporting documentation for those jurisdictional reports for 1 year; provision of a traffic study as contemplated in the October 26, 1984, Order in Administrative Case No. 273; and compliance with advertising requirements and restrictions regarding intraLATA service.

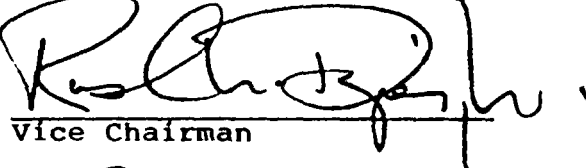
IT IS FURTHER ORDERED that MCI shall not provide intra-state intraLATA services to residents of Kentucky.

IT IS FURTHER ORDERED that MCI's rates as filed are approved and that it shall file its tariffs setting forth its rates, rules and regulations in the manner prescribed by the Commission within 30 days of the date of this Order.

Done at Frankfort, Kentucky, this 21st day of November, 1984.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

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Secretary